

Missouri Attorney General  
**CHRIS KOSTER**



---

**2012 Annual Report**



Fellow Missourians,

I'm grateful to you for giving me the opportunity to serve as your Attorney General and to work every day on behalf of Missourians. The Attorney General's Office has had a very successful year representing your interests in 2012. To give you a better understanding of all that our office does to protect Missouri citizens, this Annual Report details what each division of the Attorney General's Office accomplished last year. Here are a few examples:

- The office is assisting Missourians in getting an expected \$196 million in payments and benefits from the National Mortgage Settlement. As of November 2012, more than \$150 million in relief had come to the state in the form of principal reductions, short sales, refinancing, and other borrower assistance programs for individuals whose homes are worth less than they owe, as well as a direct cash payment to the state of \$38 million.
- We added millions of cell phone numbers to Missouri's no-call registry, after legislation allowed cell phones to be covered by the state's no-call law. The office continued to take action against telemarketers who violated the law, obtaining more than \$1.4 million in judgments against telemarketers in 2012, up from just over \$1 million in 2011.
- We settled LCD price-fixing claims against major manufacturers of flat-panel displays and televisions, which will bring relief to consumers who had purchased these products.
- We protected the safety and well-being of Missourians by prosecuting more than 60 homicide cases and many cases involving child molestation, sexual abuse, rape, kidnapping, arson, domestic assault, driving while intoxicated, identity theft, burglary, public corruption and financial exploitation of the elderly.
- We filed criminal charges against Bruce Cole, the mastermind behind the failed Mamtek venture in Moberly, Missouri.
- We filed the nation's first criminal charges against a national mortgage document execution company, DocX, and its president, Lorraine Brown. The case resulted in a guilty plea by Ms. Brown and civil settlements between DocX, its parent company, LPS, and many states as well as the Department of Justice.
- We identified and prosecuted Medicaid fraud cases, obtaining more than \$50 million in judgments and recoveries for the state that had been stolen by Medicaid fraud, as well as obtaining 12 state criminal convictions for Medicaid fraud.
- We protected Missouri's land, air and waterways in more than 780 legal matters, and had favorable decisions for the state in more than 95 percent of cases undertaken.

Thank you for allowing me the privilege of serving as your Attorney General. I invite you to contact my office if there is any way we can assist you.

Respectfully,

A handwritten signature in black ink that reads "Chris Koster". The signature is stylized with a large, bold "C" and a long, sweeping horizontal line at the end.

CHRIS KOSTER  
Attorney General



## Promoting Internet Safety

Attorney General Koster makes internet safety for young people a priority. Beginning in 2010, Attorney General Koster directed Public Education Director Tom Durkin to give public-service presentations to students and parents throughout the state.

Since that time, the Attorney General's office has offered presentations to over 100 schools across the state from Campbell and Qulin in southeast Missouri to Pineville and Jane in southwest Missouri. Mr. Durkin has visited Springfield, Joplin, St. Louis -- he's traveled all the way to St. Joseph in the northwest and Memphis, MO in the northeast. No district was too small or too far when it came to providing important information that benefits the students in the state and helps keep them safe when they are using 21st Century technology.

More than 20,000 students/teachers/parents have attended presentations offered by the AGO on the subject of Internet Safety.

*"The Internet opens up a world of possibilities for our young people. But it can also open them up to a world of danger. My office will continue to warn children and parents throughout the year about possible dangers on the Internet, and fight to keep Internet content appropriate."*

Attorney General Chris Koster



"Kindness is Cool" anti-bullying program at Tuscumbia School





## Agriculture and Environment

The Agriculture and Environment Division aggressively protects Missouri's natural resources. The Attorney General's environmental attorneys take legal action to stop pollution of the state's air, water and soil through injunctions, fines, penalties, and, in the most serious cases, incarceration.

The division also works to protect and enhance agriculture and the quality of life for rural Missourians by enforcing the law and advocating responsible public policy.

Division attorneys represent the Department of Natural Resources (DNR) and its constituent boards and commissions that regulate the use of the state's air, land and waters. At any given time, the division has about 500 active cases, including enforcement referrals and administrative appeals before the DNR's commissions. Enforcement litigation is filed primarily in state courts to seek preliminary and permanent injunctions to ensure compliance with Missouri's environmental laws.





## Agriculture and Environment (continued)

### **Success stories and notable cases:**

In 2012, the work of the division, in cooperation with the Financial Services Division, resulted in collections of more than \$2 million in penalties, damages and costs from polluters.

### **Programs:**

The Attorney General continued his Clean Water Initiative, which focuses the division's efforts on protecting Missouri's lakes, rivers and streams. As a part of this Initiative, the Division worked with the Department of Natural Resources on the Lake of the Ozarks enforcement initiative. DNR has referred 104 violators to the Attorney General's Office. The division has filed or appeared in 101 cases and resolved others by pre-litigation negotiations.

The Department of Agriculture referred 15 cases in 2012, 13 of which resulted in cases being filed. The Attorney General, in conjunction with the Department of Agriculture, continued Prosecution Bark Alert, an effort to eliminate illegal and substandard dog-breeding operations. The Canine Cruelty Prevention Act strengthened state enforcement and oversight of dog-breeding operations. The Canine Cruelty Prevention Unit provides immediate support for the Department of Agriculture's rescue efforts and addresses the consumer protection violations that often result from the sale of dogs from substandard operations. The Attorney General's Office has assisted the department in an effort that has resulted in the rescue of more than 5,500 animals. The Attorney General also has established a web page that allows the public to report incidents of abuse to animals. In 2012, the Attorney General's Office filed 15 lawsuits against violators, shutting down 5 and bringing the others into compliance.

The division also completed its two-year-long lawsuit against Morningland of the Ozarks, LLC when the Missouri Supreme Court refused Morningland's request for further review. On January 25, 2013, the Department of Agriculture oversaw the destruction of the contaminated cheese that was the subject of the lawsuit.

### **Verifiable collection amounts:**

In 2012, the office's representation of the Department of Natural Resources resulted in collections of \$2,131,911.80 for DNR, \$1.5 million of which came from a state/federal enforcement judgment entered in 2011. In addition, \$324,746.95 was collected for the Department of Agriculture.

While these dollar figures convey the magnitude of the division's contribution to the state's financial resources, the value of the environmental clean-ups and pollution control equipment obtained is far greater - but nearly impossible to put a monetary value on.



## Agriculture and Environment (continued)

**Additional Information:** In 2012 the Agriculture and Environmental Division favorably won or resolved on terms favorable to the state (or obtained penalties and/or environmental relief) more than 95 percent of its cases.

The Agriculture and Environmental Division worked on more than 782 legal matters in 2012. It opened 85 new cases and resolved 345 matters.



## Consumer Protection Division

The Attorney General's Consumer Protection Division has moved Missouri toward a more open and honest marketplace since the adoption of Missouri's Merchandising Practices Act 42 years ago. The division also serves a vital role in enforcing Missouri's antitrust, securities, telemarketing, nonprofit, charitable trust, and foundation laws.

In addition to having the authority to initiate both civil and criminal prosecutions against wrongdoers, the Attorney General is responsible for investigating unfair and deceptive business practices. Our investigators receive and review complaints, assist in issuing pre-litigation subpoenas, and assist in applying for search warrants.

In 2012, the Consumer Protection Division responded to 124,425 consumers who contacted the office either to lodge a complaint or to request information. Division staff recovered more than \$8.7 million in restitution for Missouri consumers through investigations and informal mediation with businesses. Through actual litigation on behalf of Missouri citizens, the division obtained 67 formal settlement agreements, injunctions, or other judgments preventing deception, unfair practices, investment fraud, anti-competitive conduct, and violations of the telemarketing (No-Call) laws. These formal actions resulted in an additional \$42 million in monetary recoveries, \$11.5 million of which is allocated to restitution for Missouri consumers.

### Top Consumer Scam List

1. **NO-CALL COMPLAINTS** (39,990 complaints) – On average, consumers filed 212 complaints each working day, twice as many as two years ago. The Attorney General's Office asks consumers to report unwanted calls to the No-Call complaint hotline at 1-866-buzzoff (1-866-289-9633).
2. **DEBT COLLECTORS** (1,769 complaints) – State and federal laws protect consumers from harassment. Consumers who believe they are being harassed should report the behavior to the Attorney General's Office.
3. **MORTGAGE/FORECLOSURE/LOAN MODIFICATIONS** (1,648 complaints) - Many struggling homeowners have filed complaints concerning foreclosures and difficulties with the loan modification process. The National Mortgage Settlement provides \$25 billion in relief to homeowners whose loans are with the five settling banks: Bank of America, Citigroup, JPMorgan Chase, Wells Fargo, and Ally Financial. Consumers should report any concerns that the terms of the settlement are not being met to the Attorney General's Office.
4. **MAIL AND PHONE SOLICITATIONS** (1,432 complaints) - Consumers continue to be inundated with mail, emails and telephone calls offering them "valuable prizes." Often, the mail looks official, as if it is from a government agency. Instead, these are scams designed to entice consumers to give out their financial information or to send money. Foreign lottery promotions are the largest type of sweepstakes scams that affect consumers nationwide. Consumers should not give financial information to people they do not know or wire money to strangers. Any consumer who is not sure whether an offer is legitimate should call the Attorney General's Office before taking action.



## Consumer Protection Division (continued)

5. TELEPHONE CRAMMING and BILLING (1,165 complaints) - Cramming happens when a consumer receives charges on phone bills for services not ordered; often the charges are by third parties. To detect cramming, consumers should thoroughly review their phone bills. Consumers who notice unwarranted charges should contact their phone service carrier to request that unauthorized charges be removed and that they receive a refund.
6. CREDIT AND DEBIT CARD (1,165 complaints) - Complaints involved both charges that the consumer never authorized and double-billing on the card or account after making a purchase. The Attorney General recommends that consumers be wary of authorizing direct bank account debiting and not to provide bank account numbers over the phone. Using a credit card does provide some protection under a federal law granting consumers the right to challenge unauthorized charges, but this must generally be done in writing within 60 days of the charge appearing on the consumer's monthly statement. Even so, consumers are encouraged to provide credit card information only to familiar merchants contacted by the consumer.
7. HOME REPAIR AND REMODELING (928 complaints) – Many home-repair scammers go door-to-door, offering to do work but asking for money up-front. The majority of door-to-door schemes involved asphalt driveway scams, roof and chimney repairs, and remodeling work inside the home, often following storms. Many home-repair scam artists are not licensed, are not from the area, do not provide a detailed contract, and usually demand cash payments.
8. PUBLICATIONS AND MAGAZINES (823 complaints) - In 2012, the Attorney General saw an increase in this category of consumer complaints. In some complaints, telemarketing companies offered new subscriptions or renewals at discounted rates, or with the promise of a prize, but once the telemarketer had the consumer's credit card information it charged inflated rates or failed to provide the magazines. Other complaints involved door-to-door sales people who claimed to be raising money for college, camp, or charity, but then never received the publication. Concerned consumers should check directly with the school or charity to see if sales are being conducted in the area at that time.





## Consumer Protection Division (continued)

**9.** CABLE/SATELLITE SERVICES (670 complaints) - Calls to the Attorney General's Office ranged from complaints about installation and price discrepancies to channel selections. Consumers should be cautious when ordering a new service and should always read the fine print.

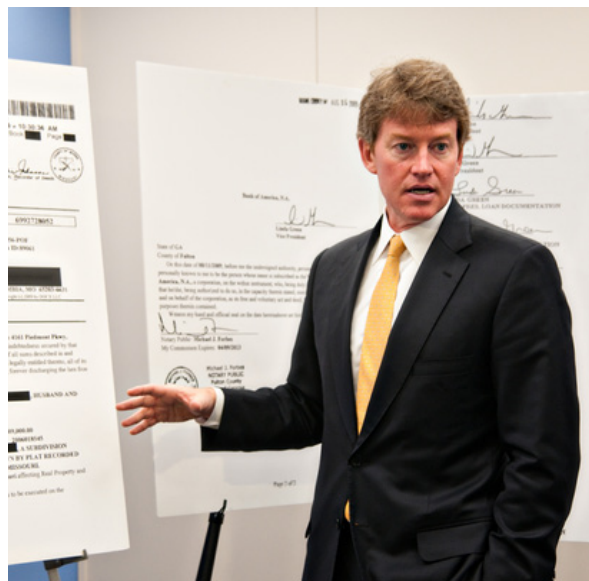
**10.** AUTOMOBILE REPAIR (641 complaints) - While most repair shops are honest, it is very easy for an unethical mechanic to convince car owners that unnecessary repairs are needed. The Attorney General advises consumers to get a written estimate before repairs are made, have repairs made by a certified mechanic, and verify that the business honors existing warranties and guarantees repairs.

### Other Highlights:

#### Cracking Down on Fraudulent Auto Service-Contract Businesses

In 2012, the Attorney General's Office continued its efforts to reform the automobile extended service-contract industry.

The Attorney General obtained convictions against Darain and Cory Atkinson, the owners of US Fidelis, for unlawful merchandising practices, stealing and insurance fraud. US Fidelis was the leader in this industry, using telemarketing and high-pressure sales tactics to enroll consumers in extended service contracts by exaggerating the coverage, making it extremely difficult to cancel, and pocketing refunds that should have been returned to the consumers.





## Consumer Protection Division (continued)

The Attorney General was also instrumental in creating a restitution fund for US Fidelis consumers through the Federal Bankruptcy Court, which allocated over \$14 million to help compensate victims of US Fidelis. The office also obtained civil judgments against the company and many of its top managers.

In addition, the Attorney General's Office reached settlements with several other extended-service contract providers. In November 2012, the Office obtained a consent judgment against StopRepairBills.com (formerly known as National Dealers Warranty) for at least \$399,400 (including \$263,900 in restitution). Other settlements were reached with Carsafe (formerly known as Dealer Preferred Warranties), Warrantech, Dealership Warranties, and Carhill Enterprises (doing business as Consumer Protection Services).

### **Efforts to Stop “Cramming” on Telephone Bills**

In 2012, the Attorney General's Office undertook efforts to stop illegal “cramming” - the practice of billing consumers for services through their telephone bills, often without their knowledge or consent. The problem of the illegal placement of unauthorized charges from third-party vendors on consumers' telephone bills, known as “cramming,” is rampant in Missouri and nationwide. Cramming is prevalent because: 1) con artists can easily obtain telephone numbers, and 2) credit cards, banks and other billing and collection systems lack effective mechanisms for risk assessment and fraud prevention. Telephone carriers and billing aggregators, the other two players in the industry along with the third-party vendors, have also perpetuated the practice and allowed cramming to continue. Carriers contract with billing aggregators who have business relationships with the vendors, and carriers control access to their customers' telephone bills and distribute the revenue generated from third-party charges.

In 2012, the Attorney General's Office took steps to crack down on unlawful cramming. In March, the Attorney General filed suit against six vendors who caused authorized charges to be placed on approximately 20,000 Missourian's phone bills: Small Business Organization, Coast-to-Coast Voice, Green Certification, Odyssey Communication, Family Contact 911, and ID Lifeguards. The Attorney General's Office is also working with Attorneys General from other states and the federal government to address cramming perpetuated by billing aggregators and phone carriers.



## Consumer Protection Division (continued)

### LCD Price-Fixing Settlement

Missouri businesses, consumers, and governmental entities spend hundreds of millions of dollars each year on computers and other electronic devices containing TFT-LCD panels, often referred to as “flat screens”.

On August 17, 2010, Attorney General Koster filed suit along with other State Attorneys General against the world’s leading manufacturers of TFT-LCD panels, alleging violations of state and federal antitrust and consumer protection laws. The lawsuit sought an injunction, restitution and other relief. The suit alleged that since the late 1990s the world’s leading manufacturers of TFT-LCD panels conspired with each other to keep prices higher so they could improve their profits in this mega-billion dollar market. TFT-LCD panels are incorporated into a wide variety of products, including computer monitors, flat-screen televisions and notebook monitors.

The Missouri Attorney General’s Office was appointed Co-Liaison Counsel for the several states participating in this litigation and, in addition to litigating the case, participated in the negotiation of settlements with all of the manufacturers, resulting in a total of 10 settlements generating \$1 billion for a settlement fund covering all of the litigation.

In addition to these settlements, the Missouri Attorney General and the other seven Attorneys General reached separate agreements with six of the manufacturers to resolve claims they brought for civil penalties. As a result of these additional settlements, Missouri’s School Fund (which receives payment of penalties and fines) will receive more than \$2 million.

### No-Call List Expanded to Include Cell Phones

The no-call law allows Missourians to reduce unwanted telemarketing calls made to their homes by signing up for the no-call list, which is managed by the Attorney General’s Office. In August 2012, the no-call law was expanded to include cell phones. There are currently more than 4.3 million Missouri phone numbers registered on the no-call list.





## Consumer Protection Division (continued)

In 2012, the Attorney General's office investigated 39,990 complaints related to no-call and telemarketing violations. As part of the office's ongoing efforts to prevent no-call violations, the office obtained over \$1.4 million in judgments against telemarketers. Complaints about unwanted calls have increased dramatically in the past few years. While Missouri's no-call list provides protection against unwanted calls from many in-state and national businesses, new technology allows callers from around the world to place millions of calls each day, anonymously, over the internet. Callers also utilize "spoofing," fake caller ID information, to make it harder to trace where the calls originate. The callers often are random-dialing millions of numbers, looking for working phone numbers so they can try to sell a product or perpetrate a scam against the person answering the phone.

The Attorney General's office works with the Federal Trade Commission (FTC) and other states to try to track down these illegitimate calls. Missouri provides information to the FTC for cases in which Missouri does not have jurisdiction. In late 2012, the FTC was able to shut down Pacific Telecom, a telemarketer operating out of Belize that preyed on people in Missouri and other states. The FTC, based in part on information from Missouri, was also able to take action against seven companies making automated calls for "card services."

### **Mortgage Reform and Combating Robosigning**

The Attorney General took dramatic steps to address the mortgage crisis and the damage caused by robosigning of foreclosure documents in 2012.

The Attorney General joined in the historic National Mortgage Settlement between 49 states and the federal government and five of the nation's largest loan servicers: Bank of America, Citigroup, JPMorgan Chase, Ally Financial/GMAC, and Wells Fargo. As a result of the settlement, Missourians who were foreclosed upon in 2008-2011 are eligible to receive roughly \$2000 each, up to about \$31 million. Other Missouri homeowners will receive loan modifications, principal reductions, and other assistance with their mortgages. In all, Missouri is estimated to receive more than \$196 million in payments and benefits from the settlement.

In addition to the national settlement with loan servicers, in January the Attorney General filed the nation's first criminal charges against a national mortgage-document-execution company, DocX, and its president, Lorraine Brown. This case resulted in a conviction of Ms. Brown and civil settlements between DocX, its parent company LPS, and many states as well as the Department of Justice. As a result, Missouri will recover \$2.5 million. Ms. Brown will be sentenced in Spring 2013.





## Criminal Division

The Criminal Division represents the state in nearly every felony case, including capital cases, appealed to the Missouri Supreme Court and the three districts of the Missouri Court of Appeals. The division also represents the state in civil appeals filed in Sexually Violent Predator commitment cases.

In 2012, the Criminal Division filed 866 briefs in the courts of our state. The vast majority of these briefs were filed in felony cases. A small number were sexually violent predator appeals and driver's license revocation cases.

### NOTABLE CASES:

#### In the Missouri Supreme Court:

##### Capital Cases:

*Carmen Deck v. State.* The Court upheld the denial of the defendant's post-conviction motion. The defendant executed a couple in Jefferson County as part of a plan to steal money; the defendant was sentenced to death for each murder.

*State v. Vincent McFadden.* The Court upheld the defendant's convictions of first-degree murder and armed criminal action. The defendant was sentenced to death for shooting a man who had already been shot by the defendant's cohort and was lying helpless in a neighbor's driveway.

*Scott McLaughlin v. State.* The Court upheld the denial of the defendant's post-conviction motion. The defendant raped and brutally murdered his girlfriend.

*State v. Michael Tisius.* The Court upheld the defendant's sentences of death. The defendant killed two guards at the Randolph County Jail during an escape.

*Johnny Johnson v. State.* The Court upheld the denial of the defendant's post-conviction motion. The defendant wanted to have sex with the six-year-old victim; he took the victim to a secluded place, attempted to rape her, and then brutally beat her to death when she resisted.

*Kenneth Baumruk v. State.* The Court upheld the denial of the defendant's post-conviction motion, in which the defendant had sought to vacate convictions and sentences arising out of a shooting spree in the St. Louis County Courthouse. The defendant killed his wife and wounded several others.



## Criminal Division (Continued)

### Non-capital Cases:

*State v. Grant Mixon.* The Court upheld the constitutionality of the statute-of-limitations statute, and held that for purposes of the statute, the filing of a criminal complaint commences the prosecution. The Court remanded the case so that defendant could be tried for his offense.

### In the Missouri Court of Appeals:

*State v. Rayshawn Taylor.* The Court upheld the defendant's convictions on one count of first-degree murder, three counts of first-degree assault, four counts of first-degree assault of a law enforcement officer, and eight counts of armed criminal action. The defendant and two co-actors engaged in a drive-by shooting (killing one person), and then they engaged in a firefight with the police as they were pursued in Kansas City.

*State v. Kenneth Sills.* The Court upheld the defendant's conviction of first-degree murder. The defendant and a co-actor repeatedly shot and killed the victim. The defendant shot the victim three times in the head at close range.

*State v. Zachary Johnson.* The Court upheld the defendant's convictions of four counts of possession of child pornography. The Court held that the search warrant for child pornography could be supported by allegations that the defendant had molested a boy while staying in a hotel room in Columbia for a state basketball championship.

*Steven Rios v. State.* The Court upheld the denial of the defendant's post-conviction motion, in which the defendant sought to vacate a second-degree murder conviction. The defendant was a Columbia police officer who killed a University of Missouri student with whom he was having an affair.

*State v. Gebar Byrd.* The Court upheld the defendant's convictions for murder, involuntary manslaughter, and other crimes. The defendant pushed his longtime girlfriend (who could not swim) into the Mississippi River as she held their one-year-old son, following an argument in North Riverfront Park. The girlfriend's body was found by a fisherman in a flood wall more than 8 miles downstream; the child's body was never recovered. The defendant went on television in St. Louis to appeal for the return of his son "now that his mother is out of the way."



## Criminal Division (Continued)

*State v. Tausha Lee Morton aka Tausha Lee Fields.* The Court upheld the defendant's conviction for first-degree murder and armed criminal action. The defendant was a bigamous wife, and she and her new husband killed her previous husband and buried him on the new husband's property. The murder went undiscovered for around four years until a subsequent boyfriend's internet research led to the discovery of the murder. The case was featured on CBS's 48 Hours and the Oxygen Network's "Snapped."

*State v. Derrick Washington.* The Court upheld the defendant's conviction of deviate sexual assault. The defendant was a Mizzou football player who assaulted the victim while she slept in her room.

*Travis Midgyett v. State.* The Court upheld the denial of the defendant's post-conviction motion, in which the defendant sought to vacate convictions of second-degree murder and first-degree robbery. The defendant and his co-actor had murdered a man while attempting to rob him of drugs.

*State v. Christopher Colletta.* The Court upheld the defendant's conviction for first-degree murder. The defendant had murdered his estranged wife in the parking garage of St. John's Mercy Hospital.

*State v. Ryan Patterson.* The Court upheld the defendant's convictions for three counts of first-degree murder. The defendant shot his girlfriend's ex-husband's girlfriend, her teenage son, and her unborn baby.

*State v. Leroy Meyers.* The Court upheld the defendant's conviction of receiving stolen property, even though the state did not prove that there was another person who delivered the stolen property to the defendant. The Court upheld the state's interpretation of the statute and concluded that proof of another actor was not necessary to support the conviction.

*State v. Gevante Anderson.* The Court upheld the defendant's convictions on four counts of first-degree murder. The defendant killed his ex-girlfriend, her current boyfriend, and her two young nephews.

*State v. Todd Shepard.* The Court upheld the defendant's convictions for first-degree murder and armed criminal action. The defendant killed a police officer who was parked in his patrol car in University City.

*State v. Gary Dean.* The Court upheld the defendant's conviction for possession of child pornography and held that the court may consider three photographs as a collage, rather than as individual photographs, in determining whether they "depicted sexual conduct" as required by the statute.

*State v. Richard Williams.* The Court upheld the defendant's convictions of first-degree murder and armed criminal action. After spending the day consuming drugs and alcohol, the defendant repeatedly stabbed and murdered the sleeping victim.



## Financial Services Division

### Breakdown of Services Provided

*The Financial Services Division's Recovery Unit* provides collection services to more than 40 state agencies and several divisions within the Attorney General's Office ("AGO"). Together, these agencies, commissions and AGO divisions refer to the unit more than 100 types of debts for collection. The Unit also handles some non-collection legal work, including Income Maintenance cases. The attorneys in the unit maintain heavy caseloads. The following summary describes some of our most common case types:

*The Estate Recovery program* seeks to collect a debt from a deceased debtor's probate estate. If there is not an estate open in the probate court of the county of death, the AGO, as a creditor, has one year from the date of death to force open an estate. These cases typically are Medicaid debts, but can also include Income Maintenance sources of aid.

*The Bankruptcy recovery program* seeks to collect a debt through a debtor's bankruptcy. The unit files proofs of claim in bankruptcy proceedings. In addition, the unit represents state agencies to protect a regulatory interest (i.e., an environmental concern, public safety, or licensing) that might be lost or impaired.

*The Missouri Incarceration Reimbursement Act ("MIRA") recovery program* seeks to collect funds from inmates in Missouri prisons to pay for their cost of incarceration.

*The Third Party Liability recovery program* seeks to collect a debt from the insurance proceeds to which the client's lien has attached. The State has lien and subrogation rights when a MO HealthNet recipient is entitled to recover from a third party such as another insurer (health insurance, liability, workers compensation, etc.) or a tortfeasor. Section 208.215, RSMo, allows the recipient to ask a court for relief from the lien, and the Recovery Unit defends the State when the recipient elects to do so. The circuit court has broad discretion to, and often does, significantly reduce or eliminate the lien.

*The General Recovery program* seeks to collect debts that do not fit into the other types of collections from a living debtor, who is not in bankruptcy, by setting up a payment plan or obtaining a judgment and garnishing the debtor's wages or bank accounts. This work is done for virtually every state agency, some state-wide offices, and funds, including: the Veteran's Commission; the State Lottery Commission; the Ethics Commission; the Departments of Agriculture, Corrections, Health and Senior Services, Labor and Industrial Relations, Mental Health, Public Safety, Natural Resources, Revenue, Social Services; the National Guard; the Secretary of State; and the Tort Victims Compensation Fund.

*The Income Maintenance program* is not a collection program but, instead, defends, in circuit court, decisions by the Department of Social Services to deny public assistance benefits to an applicant.

*Non-Case Matters* typically include providing general counsel legal advice on collection matters.





## Financial Services Division (continued)

The \$21,964,547.65 in total payments received by the division in 2012 was collected under five categories of payment types: Generated Payments, Processed Payments, Garnished Payments, Assisted Payments or Bankruptcy Payments.

**Generated Payments** – A payment is “generated” if the primary reason a debtor makes a payment is collection work performed by the division staff and attorneys.

**Processed Payments** – A payment is “processed” when the division has not taken any action to generate that payment, but receives the payment, generates a receipt, deposits the money (in escrow, when necessary), forwards it to the correct payee, and receives a receipt from the payee.

**Assisted Payments** – A payment is “assisted” when another division of the Attorney General’s Office is the primary cause for generating the payment; but the Financial Services Division performed some collection work that assisted in generating the payment.

**Garnished Payments** – A payment is “garnished” when the division issues a garnishment against a debtor. Garnishments can only be issued if a judgment has been obtained.

**Bankruptcy Payments** – These are payments the Division collects as a result of its work in bankruptcy proceedings.



## Governmental Affairs Division

The mission of the Governmental Affairs Division is to protect the safety and well-being of Missourians by ensuring professionals adhere to state laws; helping the most vulnerable get good care; enforcing state ethics and campaign finance laws; ensuring appropriate Medicaid reimbursement; and providing representation, advice and legal support to state agencies and officials.

The Governmental Affairs Division protects citizens' safety and well-being by:

- Ensuring that professionals adhere to state laws and disciplinary rules.
- Enforcing state ethics and campaign finance laws.
- Enforcing the Missouri Human Rights Act relating to discrimination in places of public accommodation, housing, and employment.
- Enforcing state open meetings and records laws.
- Removing care givers who abuse or neglect vulnerable citizens.
- Prosecuting violations of nursing home standards.
- Helping mentally ill or physically challenged Missourians obtain guardians to help get care.
- Ensuring appropriate Medicaid reimbursement.
- Enforcing the provisions of the tobacco Master Settlement Agreement and state law requiring certain tobacco manufacturers to establish escrow accounts.
- Representing the Missouri Lottery Commission.

### Professional Licensing Unit

The Division's Professional Licensing Unit serves and protects the safety and well-being of Missouri citizens by ensuring that professionals who are required to be licensed by the state (such as: pharmacists, nurses, appraisers, engineers and veterinarians) adhere to state laws and disciplinary rules. In 2012, more than 300 professional licensees were prosecuted for violations involving misconduct, negligence, or incompetence in the practice of their professions. Disciplines ranged from reprimands to revocations of licenses.



## Governmental Affairs Division (continued)

### Number of Cases Closed in 2012 per Professional Licensing Board

Board of Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects	22
Office of Athletics	1
Board of Embalmers and Funeral Directors	2
Board of Examiners for Hearing Instrument Specialists	1
Gaming Commission	3
Board of Registration for the Healing Arts	2
Committee for Interpreters	1
Liquor Control	7
Lottery Commission	6
Committee of Marital and Family Therapists	1
Board of Nursing	7
Board of Nursing Home Administrators	4
Board of Occupational Therapy	1
Board of Pharmacy	9
Peace Officer Standards and Training	52
Board of Private Investigators	1
Committee of Psychologists	12
Board of Podiatric Medicine	1
Committee for Professional Counselors	4
Real Estate Commission	70
Real Estate Appraisers Commission	58
Board of Respiratory Care	16
Committee for Social Workers	12
Office of Tattooing, Body Piercing & Branding	12
Veterinary Medical Board	5
TOTAL	310



## Governmental Affairs Division (continued)

### Governmental Entities Unit

Attorneys in the Division's Governmental Entities Unit represent the Department of Social Services in efforts to recoup Medicaid funds and the Department of Health and Senior Services in enforcing civil monetary penalties against nursing home facilities. They provide general counsel to the Missouri Lottery Commission and handle important litigation for various state agencies in all levels of federal and state courts and in state administrative hearings. They also represent the Missouri Commission on Human Rights in enforcing laws related to discrimination in places of public accommodation, housing and employment

### Missouri Commission on Human Rights

In 2012, the Division continued its enforcement of the provisions of the Missouri Human Rights Act. In one case, the Division obtained a judgment finding racial harassment and housing discrimination and the violator was ordered to pay \$125,000 in actual damages for humiliation and emotional distress and \$37,500 in actual damages for violation of the tenant's civil rights. In another case, a company was ordered to pay damages in the amount of \$85,000 for denying a position to an applicant after he disclosed a prior medical condition during the application process.

### Department of Social Services – MO HealthNet Division

In 2012, the Governmental Affairs Division represented Missouri Department of Social Services, MO HealthNet Division, in its efforts to recoup improperly paid Medicaid funds. The MO HealthNet Division referred numerous recoupment cases to the Governmental Affairs Division. Through litigation, the Governmental Affairs Division obtained authorization for the MO HealthNet Division to recoup more than \$400,000 in Medicaid funds including, in one case alone, \$189,351 in overpayments.

### Department of Health and Senior Services

The Division represents the Department of Health and Senior Services and enforces civil monetary penalties against nursing home facilities for alleged violations of the law protecting the health, safety, and welfare of the vulnerable residents of these facilities. These allegations range from the failure to properly use a lift, causing a patient to fall, to failure to promptly correct a flaw in the fire alarm system. Some cases involve harm to residents, others involve potential harm. In 2012, the Attorney General's Office reached Settlement Agreements imposing civil monetary penalties with 21 nursing home facilities in the State of Missouri for alleged violations.





## Governmental Affairs Division (continued)

### Department of Elementary and Secondary Education

The Governmental Affairs Division in 2012 received 11 teacher discipline referrals from the Department of Elementary and Secondary Education and finalized 25 cases. As a result, teacher certifications were surrendered, suspended and, in 8 cases, revoked. Certifications were affected in cases where the division proved teachers had committed crimes or engaged in unethical behavior, including having sexual contact with students.

### Open Government

In 2012, in an effort to promote and enforce open government laws, the division responded to more than 100 inquiries per month regarding the Sunshine Law. Questions came from county and municipal employees, elected officials, and private citizens. Issues ranged from releasing public records to posting of meeting notices to proper reasons for closing meetings. This division also sent out hundreds of copies of a booklet published by this office entitled "Missouri Sunshine Law."

### Mental Health Unit

The Mental Health Unit protects the health, safety, and welfare of Missourians receiving services through both the Department of Mental Health and mental health practitioners in the private sector by pursuing cases of alleged abuse and neglect, and unethical practice. The unit also protects the public by petitioning for placement of Department of Mental Health forensic patients that ensures the appropriate level of security and oversight. Additionally, the unit serves Missourians by obtaining guardians for individuals receiving Department of Mental Health services and by participating in juvenile proceedings.

In 2012, the Mental Health Unit prosecuted 26 abuse and neglect cases and litigated approximately 25 guardianship cases and 25 Medicaid eligibility and waiver cases.

For example, in one case where an individual menaced a resident of a care facility by triggering a stun gun in the air, the unit was able to prove the elements of verbal abuse. As a result, the perpetrator was placed on the Employment Disqualification List and is ineligible for employment with in-home agencies, hospitals, and a variety of licensed care facilities.

The unit also obtained an injunction on behalf of the Missouri Dental Board preventing a dentist from practicing dentistry. The dentist had been behaving erratically, including brandishing a sword in the presence of staff and patients.



## Labor

### Overview

The Labor Division provides general counsel and litigation services for the Missouri State Treasurer in his capacity as custodian of the Second Injury Fund and for the Department of Labor and Industrial Relations in its role administering the Fund. The Division similarly provides general counsel and litigation services for the State's Office of Administration, Central Accident Reporting Office (CARO), in defending workers' compensation claims filed against a multitude of state agencies by their employees. The Division also represents the State of Missouri in crime victims' compensation claims.

The Labor Division attorneys and staff have been working on a month-to-month employment basis since May 2011. No new settlements have been entered on behalf of the Second Injury Fund since September 2009.

In 2012, the Labor Division processed 7,614 new claims that were filed against the Second Injury Fund and 945 new claims filed against CARO, or 8,559 total new claims.

### Top Cases and Issues

#### *Continued Schoemehl litigation*

In *Schoemehl v. Treasurer*, 217 S.W.3d 900 (Mo. banc Jan. 9, 2007), the Supreme Court of Missouri held that an injured worker's surviving dependents are entitled to ongoing permanent total disability benefits awarded to the worker against an employer or the Second Injury Fund even after the worker dies from causes unrelated to that injury. The General Assembly abrogated *Schoemehl* with amendments effective June 26, 2008, providing that, aside from benefits already accrued at the time of the worker's death, no other compensation for the injury shall be paid to the worker's surviving dependents after the worker's death. However, litigation concerning the scope of *Schoemehl* continues, and the division continues efforts toward circumscribing the detrimental fiscal impact of *Schoemehl* benefits on the Fund and CARO.



## Labor (Continued)

In 2012, the Supreme Court held in *Gervich v. Condaire, Inc.*, 370 S.W.3d 617 (Mo. banc Jul. 31, 2012), that the June 23, 2008, legislative amendments abrogating Schoemehl were substantive and do not apply retroactively. In other words, it held that Schoemehl benefits apply to all pending cases in which the injury occurred prior to the effective date of the 2008 amendments. The Court did not specifically address whether or when a surviving spouse's or other dependent's benefits terminate, but it stated in a footnote that the statutory definition of "dependent" in § 287.240.4, RSMo, terminates benefits when a spouse remarries or dies.

After *Gervich*, the appellate court held in *White v. University of Missouri*, 375 S.W.3d 908 (Mo. Ct. App. W. D. Sept. 4, 2012), that although an administrative law judge or the Labor and Industrial Relations Commission was within its authority to make a factual determination that a worker's surviving spouse was the worker's dependent on the date of the worker's injury, the question of the spouse's right to survivor benefits is not ripe for determination when the spouse is still alive. Furthermore, when the injured worker dies, the surviving spouse will have to establish that they remained married until the worker's death, that the worker predeceased the spouse, and that the spouse remains unmarried in order to qualify for initial and ongoing Schoemehl benefits.

In addition to surviving spouses, other dependents can receive an award for Schoemehl benefits, including children of an injured worker who receives an award for permanent total benefits and dies of causes unrelated to the work injury. In 2012, the division filed an appeal in *Spradling v. Treasurer*, Case No. SD31907 (Mo. Ct. App. S.D.), seeking guidance as to the scope of surviving children's Schoemehl benefits and what evidence is required to establish their dependency to qualify for those benefits initially and on an ongoing basis.

In *Spradling*, the division contends that the injured, deceased worker's oldest child introduced insufficient evidence to establish her actual dependence, was too old to qualify for the statutory presumption of dependence in § 287.240.4, RSMo, and therefore was not entitled to Schoemehl benefits. The division argues that the benefits for the deceased worker's younger two children should terminate when they reach 18 years old unless they establish at that time the existence of the statutory circumstances to extend their benefits, for example, that they are physically or mentally incapable of earning wages, or that they are a qualifying college student per § 287.240.4(b), RSMo.

### *Threshold litigation*

Section 287.220.1, RSMo, requires that a claimant have a pre-existing disability of at least 15 percent to a major extremity or 12.5 percent (i.e. 50 weeks) to the body as a whole and a current compensable injury of at least 15 percent to a majority extremity or 12.5 percent (i.e. 50 weeks) to the body as a whole in order to be considered for Second Injury Fund liability. Since these thresholds went into effect in 1993, they have been interpreted to mean that each disability—both the pre-existing and current—must meet the applicable threshold depending on the injured body parts.



## Labor (Continued)

In December 2011, the Labor and Industrial Relations Commission suddenly altered course and ruled that the statute requires consideration of the sum of all the previous disabilities for threshold purposes (i.e. it allowed claimants to stack their disabilities to meet the thresholds). In 2012, the division received favorable appellate decisions in all of its test cases, but the appellate court concluded that the cases raise an issue of general interest and importance and transferred them to the Supreme Court. *Buhlinger v. Treasurer*, ED79864 (Oct. 2, 2012), SC92867; *Dyson v. Treasurer*, ED97865 (Sept. 18, 2012), SC92850; *Salvicio v. Treasurer*, ED97862 (Sept. 11, 2012), SC92842; *Witte v. Treasurer*, WD74644 (Sept. 4, 2012), SC92834. The division argued these four cases at the Supreme Court on December 11, 2012, and await decisions.

### *Occupational disease litigation*

The General Assembly substantially overhauled the Workers' Compensation Law in 2005, adding a provision in § 287.800.1, RSMo, requiring tribunals to "construe the provisions of this chapter strictly." Section 287.220, RSMo, which establishes the Second Injury Fund and the scope of its liability, requires in part that for Fund liability there be a qualifying "subsequent compensable injury." "[I]njury" defined in § 287.020.3(1), RSMo, "shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form." Further, the only provision for compensability of occupational diseases, in §§ 287.063 and .067, RSMo, is by the "employer."

The division unsuccessfully argued in its three test cases, one in each appellate district, that the Fund is not an employer and § 287.220, RSMo, does not provide that "injury" includes occupational disease for purposes of the Fund's liability. *Kirkpatrick v. Treasurer*, SD31983 (Dec. 20, 2012); *Peters v. Treasurer*, ED98300 (Nov. 6, 2012); *Stiers v. Treasurer*, WD75101 (Oct. 9, 2012).

The appellate court held that "compensable injury" includes compensable occupational diseases, and the Supreme Court has denied transfer from the Eastern and Western districts in two of our three test cases. As a result, the division has dismissed approximately 125 appeals pending before the Labor and Industrial Relations Commission and 15 pending before the appellate court in which it had raised this argument.

### **Monetary Savings**

In 2012, 4,846 claims were dismissed against the Second Injury Fund and 139 were dismissed against CARO for a total of 4,985 dismissals obtained. The 2012 calendar year savings by the Labor Division is calculated by multiplying the claims dismissed each month by the average disposition cost per claim for those months.

Using that formula, the total savings by the Labor Division for the calendar year 2012 is \$7,045,741.26.





## Litigation Division

The Attorney General's Litigation Division defends the state and its elected officials, departments, agencies, and employees against hundreds of lawsuits each year. Division attorneys also handle some of the most complex legal issues facing the state, including defending constitutional challenges to state laws; advancing the state's interest in complex cases; defending suits brought against the Missouri Highway Patrol and its troopers; defending the Boards of Police Commissioners and the police officers of the city of St. Louis and Kansas City; enforcing Missouri's prevailing wage, minimum wage, child labor and unauthorized alien workers laws; defending the state in employment and tort cases; promoting accessibility laws; and defending lawsuits filed by inmates.

In 2012, the Litigation Division closed 416 cases, including 111 lawsuits filed by inmates against the Department of Corrections and its employees. The work of the attorneys in the Litigation Division saved the State of Missouri approximately \$99,575,849.

### NOTABLE CASES:

*Midwest Coal v. Cabanas* Midwest Coal sued former state employee Cabanas claiming his fraudulent statements caused it to decide against entering into a commercial purchase agreement to buy coal slurry from another coal mine operator. Midwest claimed that but for Cabanas' actions and statements it would have gone forward with the purchase agreement to acquire the coal slurry, and then re-sold the slurry at a profit of approximately \$17,000,000 million. Litigation Division attorneys won a Summary Judgment at the trial court level, arguing Midwest Coal could not prove it suffered lost profit damages as it had no history of ever making a profit, nor could it prove there was any market for this blend of coal slurry. Midwest Coal appealed. The Eastern District Court of Appeals agreed with the Litigation Division's position, holding that Midwest Coal had failed to establish it had any history of profitability. As such, it was precluded under Missouri law from recovering lost profits. The Appellate Court also found that Midwest Coal's claim of a viable market for the re-sale of the slurry was too speculative and conjectural to entitle it to a jury trial on its claims of lost profits, and the judgment of the trial court was upheld.



## Litigation Division (continued)

*Hervey v. DOC* Hervey sued the Missouri Department of Corrections, alleging the DOC had discriminated against her due to a claimed disability. The DOC denied it discriminated against Hervey, and further denied that she was disabled under Missouri law. Following a week-long jury trial, a Jackson County jury returned a verdict for Hervey in the amount of \$2.5 million dollars. Litigation Division attorneys appealed the judgment to the Missouri Supreme Court, which reversed the judgment. The Division's attorneys successfully argued that the Missouri Approved Instruction (MAI) given by the trial court was prejudicially erroneous due to its failure to require that the jury find, as required by Missouri law, that the plaintiff was in fact disabled, and therefore a member of a protected class, an essential element of a disability discrimination claim under Missouri law. This decision changed Missouri law in disability discrimination cases, and provides clarity to employers and attorneys working in this area of litigation.

*Austell and T.Y.B.E. Learning Center v. Sprenger, et al.*, Plaintiffs Austell and TYBE Learning Center operated a daycare center in St. Louis. The Missouri Department of Health and Senior Services (DHSS) denied TYBE's license renewal request. TYBE filed a § 1983 claim against DHSS and certain employees for alleged due process violations based on TYBE's property and liberty interests in its operator's license. TYBE also alleged tortious interference with business expectancy. Litigation Division attorneys moved for Summary Judgment, arguing the defendants enjoyed qualified immunity on the federal claims and official immunity on the state claim, which the District Court granted. TYBE appealed to the 8th Circuit.

The 8th Circuit affirmed the district court's order, finding that TYBE failed to demonstrate it had a clearly established property interest in renewal of its license; it further found that the DHSS defendants reasonably could have concluded that TYBE had no protected property interest in the renewal of its license and they were therefore entitled to qualified immunity. The court also determined that TYBE's 'right' to a settlement offer was a state-conferred procedural safeguard that was not enforceable under the federal Constitution's Due Process Clause. Finally, the court concluded that defendants were entitled to official immunity on the tortious interference with business expectancy claim. The Court held that the actions taken by defendants were discretionary, not ministerial, and official immunity barred plaintiffs' claims.

*Doe v. Toelke. (SORA appeal)* This case involved a plaintiff who petitioned to be removed from the sex offender registry. The trial court found that the state registration law (SORA) was unconstitutional as applied to Doe because his offense predated SORA, and was therefore a violation of the Missouri Constitution ban against retrospective laws. The trial court declined to take jurisdiction over the question of whether Doe had an obligation to register under federal law (SORNA).

Litigation Division attorneys appealed the trial court decision to the Missouri Supreme Court. The Supreme Court reversed the trial court judgment to the extent it held that the court was without authority to address the applicability of SORNA and that the SORA registration requirements violated article I, section 13 as applied to Doe. This appeal addressed the unanswered question of whether a sex offender is required to register in Missouri if his offense predates SORA and his obligation to register under SORNA has expired.



## Litigation Division (continued)

*Cochrell v. Schneider, et al., and Greene v. Schneider, et al.* These two City of St. Louis cases involved claims of civil conspiracy and negligence, brought against employees of the Missouri Department of Corrections. Plaintiffs were employees of the St. Louis Community Release Center, a Missouri Department of Corrections facility. The management of the Community Release Center decided to conduct a mock training exercise involving a fictitious scenario of a disgruntled former employee coming to the Center and taking hostages. Except for the management personnel, no employees were told of the exercise beforehand. In the course of the training exercise, the man playing the role of the intruder pointed a gun at each of the plaintiff/employees. They both claimed damages of post-traumatic stress, anxiety and depression stemming from the exercise. Litigation Division attorneys moved for and obtained Summary Judgment on both claims from the trial court.

The employees appealed. They argued that the defendants failed to use ordinary care when they allowed the defendant/intruder to carry out the training exercise while using a gun in violation of a criminal statute, Mo.Rev. Stat. 217.360 (prohibiting any person from bringing guns or other weapons into a correctional center). They also argued that the wrongful act of bringing a gun to the facility was the underlying wrongful act supporting the conspiracy claims. Litigation Division attorneys successfully argued that the statute did not provide for civil liability and that defendants were protected from liability by the doctrine of official immunity. The Eastern District Court of Appeals agreed and affirmed the judgment entered by the St. Louis Circuit Court.

*Darryl Burton v. St. Louis Board of Police Comm., et al.,* In 1984, Donald Ball was fatally shot at an Amoco Service Station in the City of St. Louis. Two eye-witnesses identified plaintiff as the shooter. Many years later, one of those witnesses recanted his testimony, and the other witness died. Burton was released from prison in 2008 after the Cole County Circuit Court granted his state habeas petition and the St. Louis Circuit Attorney decided there was insufficient evidence to retry him. Burton then filed this civil suit against the members of the Board of Police Commissioners, two former police officers, and three detectives. Burton alleged that the defendants were liable under 42 U.S.C. § 1983 for framing him for the murder of Donald Ball. He asserted five theories of liability: suppression of exculpatory material, suggestive identifications, fabricated evidence, malicious prosecution, and intentional infliction of emotional distress.



## Litigation Division (continued)

Litigation Division attorneys moved for Summary Judgment for all defendants. The court granted summary judgment for defendants on the three federal claims of suppression of exculpatory material, suggestive identifications, and fabricated evidence. The court agreed that even if *Brady v. Maryland* applied to the police officers in 1984, none of these defendants withheld exculpatory material. The court further ruled that the failure-to-investigate claim failed because even if one of the detectives failed to pursue another suspect, this amounted to negligence and did not rise to the level of a substantive due process violation. The court also determined that Burton failed to show that any of the defendants preselected Burton as the murderer and that Burton failed to adduce any evidence that any of the defendants acted intentionally, recklessly, or in bad faith to suppress any exculpatory material. With regard to the suggestive identification claim, the court ruled that there was no showing that the defendants were directly involved in the process of selecting which photos were shown to the witnesses. Turning to the Board members, the court ruled that plaintiff failed to establish that the individual defendants violated the Constitution so municipal liability could not attach. The district court then declined to exercise supplemental jurisdiction over the state claims (malicious prosecution and intentional infliction of emotional distress) and dismissed these claims without prejudice.







## Public Safety Division

Public Safety Division attorneys assist local prosecutors in serious or difficult trials and grand jury proceedings. They also:

- Prosecute workers' compensation fraud and noncompliance cases
- Assist with the training of law enforcement officers and state troopers
- Prosecute abuse and neglect of nursing home residents and Medicaid fraud cases
- Seek the civil commitment of sexually violent predators
- Assist law enforcement and prosecutors with computer forensic examinations
- Represent the state in habeas appeals filed by convicted prisoners seeking release

### Special Prosecutions Unit

At the end of calendar year 2012, the Public Safety Division had 402 active special prosecutions pending in 88 of Missouri's 114 counties and the city of St. Louis. Attorneys in the special prosecutions unit assist local prosecutors in complicated trials when directed by the Governor pursuant to Section 27.030, RSMo, or when they are appointed as special prosecutors by a court when there is a conflict of interest. This important legal work saved counties approximately \$2.5 million in 2012. The special prosecutions unit received 150 new criminal cases to investigate and prosecute from 62 different counties and the city of St. Louis in 2012.

More specifically, attorneys for the division worked on more than 60 different homicide cases. Other types of cases handled by the unit included: child molestation, sexual abuse, rape, driving while intoxicated, kidnapping, arson, domestic assault, identity theft, financial exploitation of the elderly, burglary, and public corruption. Some examples of the cases handled by the unit are highlighted below.

### Homicides:

*State v. Christopher Collings (Phelps Co.)* The defendant was convicted of murder in the first degree and was sentenced to death for killing 9 year-old Rowan Ford. In 2007, the defendant drove from his home near Wheaton, Missouri, to the home where Rowan lived with her mother and step-father. He took Rowan from her bedroom and drove her back to his trailer, where he raped her before strangling her with a piece of cord. He then dumped Rowan's body in a McDonald County cave and returned to his home to burn evidence. He later confessed to the murder just after Rowan's body was found.





## Public Safety Division (continued)

*State vs. John Loomis (Polk Co.)* The defendant was convicted of murder in the first degree and was sentenced to life in prison without the possibility of parole for the stabbing death of Christopher Cornell, age 19. The defendant pepper-sprayed Cornell and then hit him with a bottle over a drug debt dispute at a party at Loomis's house. Witnesses left, but the defendant and his fiancée cleaned up the victim's blood and put his body in a pick-up truck. Cornell's body was found two days later, still in the bed of the truck, covered with trash and furniture. Cornell had eleven lacerations to his head, was shot numerous times in the head with a pellet gun, and his throat was slashed. The defendant tried to tell law enforcement it was self-defense.

*State v. Terry Volner (Wright Co.)* The defendant pleaded guilty to murder in the first degree and armed criminal action, and was sentenced to life in prison without the possibility of parole. The defendant called his mother, Tina Miller, on December 7, 2011, after the crime and sent his mother a picture of the victim, Dusty Guenther (4 years old). The defendant later confessed to law enforcement that he killed the boy and left his body in a small lagoon behind the residence of Gina Guenther. The boy's body was found in the exact location as specified by the defendant.

*State v. Howard Harmon (Jackson Co.)* The defendant was convicted of murder in the first degree and was sentenced to life in prison without the possibility of parole for the shooting death of Sabrina Jones. The defendant and three other individuals attempted to rob Jones and another victim, Anthony Gipson, at their residence. The defendant shot Jones with a sawed-off shotgun and another individual shot four times at Gipson's face with a 9mm handgun. Gipson survived and testified at trial.

*State v. David Youngblood (Ripley Co.)* The defendant pleaded guilty to four counts of murder in the first degree and was sentenced to four consecutive terms of life in prison without parole for the murders of Edgar Atkinson, Bonnie Chase, Loyd Piatt and Irene Piatt. The defendant shot the victims to death and then set their homes ablaze, trying to cover up the crimes. The defendant's daughter, Chantele Youngblood, and Keith Boyles, were also charged. The defendant's wife, Melissa, was also charged with the murders of Edgar Atkinson and Bonnie Chase.



## Public Safety Division (continued)

*State v. Steven Pyykola (Laclede Co.)* The defendant was convicted of three counts of murder in the first degree and was sentenced to life in prison without the possibility of parole, for the shooting death of Zachary Porter. The defendant, Josh Reyes, Jacky Wong, and a 16-year-old boy, conspired to kill Reyes' ex-girlfriend, Miranda Smith, her parents and grandparents and her new boyfriend, Zach Porter. While police were working the crime scene of Porter's shooting, Smith told authorities that she was concerned for her father and step-mother, who she could not reach by phone. Officers went to Smith's parent's house, found the lights on and the door unlocked. Jeffery Smith and Glenda Smith were lying on the living room floor. It is alleged that the defendants went to Bass Pro Shop and stole three black ski masks and three pairs of black gloves, and later bought goggles and sunglasses, to conceal their eyes during the homicides. Miranda Smith (daughter of Jeffrey Smith) dated Reyes off and on for years and the relationship had become rocky, to the point that Miranda did not allow Reyes to see his children.

*State v. Ryan Evans (Pulaski Co.)* The defendant was convicted of murder in the second degree and abuse of a child, resulting in death. In February of 2013, the defendant was sentenced to life in prison on the abuse charge and 30 years for murder in the 2nd degree. The child died from abusive head trauma and had 19 separate bruises located on his face and head, which were of varying stages. A bone in the child's arm was also broken, but appeared to be healing. The defendant, who had just returned to the United States from Iraq, was babysitting his girlfriend's son, while she was at work. At the time of the murder, the Army was in the process of discharging him because of his drug use.

*State v. James Reardon (Ray Co.)* The defendant was convicted of murder in the first degree and was sentenced to life in prison without the possibility of parole for the shooting death of Carol Thomas. The defendant and co-defendant, Erik Zimmerman, picked up Carol Thomas, who they believed burned them in a drug deal by supplying salt, instead of meth. After they kidnapped her in Clay County and put her in the trunk of the car, they transported her to Ray County, where they pulled her out of the car, shot her three times in the head and neck, then dumped her body in a remote area.

*State v. Brian Massa (McDonald Co.)* The defendant, a Southwest City Police Officer, was sentenced to three years in prison after a jury found him guilty of involuntary manslaughter for shooting and killing a suspect, Bobby Stacy, at the conclusion of a high-speed pursuit. Stacy lost control of the Suburban he was driving, spinning into a roadside ditch. He pulled out of the ditch and the Suburban scraped the front of Officer Massa's patrol car as Massa got out of his car. Officer Massa claimed Stacy tried to strike him with the Suburban. Officer Massa fired two rounds into the Suburban as it drove around him. However, a few seconds later, after the Suburban came to rest, the officer shot two more rounds into the Suburban, one of which struck Stacy in the back of his head. The fatal shot from Officer Massa's .45-caliber pistol, the only round to strike Stacy, entered his skull just behind the right ear, with bullet fragments coming to rest in his brain near the front of the skull. While imposing the sentence, Judge Timothy Perigo declared that the officer's actions "cannot be tolerated." According to one news report, Massa became the first police officer in Missouri history to be convicted of a homicide for an on-duty killing.



## Public Safety Division (continued)

### Assaults:

*State v. Robert Steele (Ripley Co.)* The defendant was convicted of involuntary manslaughter in the first degree and second degree assault, and was sentenced to 22 years in the Department of Corrections. The defendant was intoxicated and under the influence of drugs when driving and, five minutes after leaving a bar, crossed the center line, hitting a vehicle driven by Regina Roberts. Regina Roberts sustained serious injury and her two-year-old son, Devin Fox, died of his injuries. The defendant had in his possession several valium and morphine pills, as well as a small caliber handgun.

*State v. John Williams (Camden Co.)* The defendant pleaded guilty to felonious restraint, domestic assault in the second degree, and unlawful use of a weapon, and was sentenced to 12 years, suspended execution of sentence, and placed on supervised probation for a period of five years. The defendant held his wife against her will over the course of a weekend, assaulted her, and held a gun to her head threatening to kill first her and then both of them.

*State v. William Hawkins (Howell Co.)* The defendant was found guilty by a jury of assault in the first degree for shaking his 17 month-old daughter and was sentenced to 15 years in the Department of Corrections. The child arrived at the hospital with many bruises, significant bleeding and swelling of her brain, and retinal bleeding. The child lost the entire left hemisphere of her brain and a portion of her right hemisphere, as a result of the assault.

### Child Abuse and Molestation:

*State v. Larry McMinn (Montgomery Co.)* The defendant pleaded guilty to two counts of solicitation and one count of sexual contact with a student and was sentenced to eight years in the Department of Corrections. The defendant sent pictures of himself shirtless and text messages detailing sexual acts he wished to perform on victim. Defendant also touched the breast of the victim through her clothing in his classroom at school.

*State v. Bryan Coon (Grundy Co.)* The defendant pleaded guilty to statutory sodomy in the first degree, five counts of statutory sodomy in the first degree, two counts of furnishing pornography to a minor, and two counts of endangering the welfare of a child in the first degree and was sentenced to 60 years in the Department of Corrections. The defendant had sexually abused a 10-year-old boy that he was babysitting. He also touched two different 12-year-old boys inappropriately.

*State v. George Simpson (Audrain Co.)* The defendant pleaded guilty to child molestation and sexual misconduct with a child under the age of 15 and was sentenced to ten years in the Department of Corrections. The defendant was the babysitter of the victim, a 7-year-old female.



## Public Safety Division (continued)

*State v. Dale Smiley (Howard Co.)* The defendant was found guilty by jury of statutory sodomy in the second degree, sexual abuse, sexual misconduct, and two counts of sexual misconduct in the second degree and was sentenced to 15 years in the Department of Corrections. Defendant exposed himself to three children, ages 12, 15 and 16 at his pool.

*State v. David Darr (Linn Co.)* The defendant was found guilty by a jury of six counts of statutory sodomy and one count of child molestation and was sentenced to 57 years in the Department of Corrections. Officers discovered the defendant over a period of two years sexually abused three male children, ages 10, 10 and 13.

*State v. Dophes Barton (Oregon Co.)* The defendant, a former deputy sheriff, pleaded guilty to four counts of burglary and four counts of stealing and was sentenced to seven years on each count in the Department of Corrections, to be served concurrently. The defendant's request for probation was denied. Between August 13, 2010, and December 12, 2010, the defendant was involved in break-ins at four Oregon County buildings, including a barn leased by deer hunters, a private workshop, Brad's Bike Shop, and a Missouri Department of Transportation shed. Tools and equipment, including a four wheeler, generators, chain saws, a plasma cutter and hammer drills, were stolen from the buildings. Many of the stolen items were later located during the execution of a search warrant at the defendant's residence.

*State v. Matthew and Christopher Smith (Lawrence Co.)* The defendants were volunteer firefighters for the Halltown Fire Department. Matthew Smith pleaded guilty to two counts of arson in the second degree and two counts of burglary in the second degree and was sentenced to six years, suspended execution of sentence, and placed on supervised probation for a period of five years. Christopher Smith pleaded guilty to burglary in the second degree and arson in the second degree and was sentenced to five years, suspended execution of sentence, and placed on supervised probation for a period of five years. The defendants set an uninhabited residence on fire by spraying lighter fluid on materials inside the residence and lighting it with a cigarette lighter. Matthew also set a vacant trailer on fire.

*State v. Perry Mace (Boone Co.)* The defendant pleaded guilty to tampering with a judicial officer, Boone County Circuit Court Judge Oxenhandler, and was sentenced to four years in the Department of Corrections. The defendant filed a document with the Circuit Court of Boone County that contained several threats directed at the Boone County judge.





## Public Safety Division (continued)

### Public Corruption Crimes:

*State v. John Benn (Lewis Co.)* The defendant, a former Lewis County Sheriff's deputy, was found guilty of statutory rape in the second degree and was sentenced to four years in the Department of Corrections. The defendant had sexual intercourse with a 15-year-old female at the defendant's house, after seeking her out using the internet and luring her out of her home after midnight.

### Methamphetamine and Drug Crimes:

In 2012, Missouri law enforcement officials busted more than 1,985 meth labs throughout the state.

*State v. Michael Warren (Iron Co.)* The defendant pleaded guilty to distributing or attempt to distribute a controlled substance and involuntary manslaughter in the first degree, and was sentenced to 15 years in the Missouri Department of Corrections. The defendant provided oxycodone to a 23 year-old female, who died of an overdose. The defendant destroyed the syringe and metal spoon used with the drug to impair the investigation.

*State v. Paul Lafferty (Pemiscot Co.)* The defendant pleaded guilty to distributing, delivering, manufacturing, producing or attempting to possess with intent to distribute, deliver, manufacture and produce a controlled substance in May of 2010, and was sentenced to ten years, with the court suspending execution of sentence and placing him on supervised probation. The defendant was caught using drugs in 2012 and his probation was revoked. The court ordered the defendant to serve his 10 years in the Department of Corrections.







## Public Safety Division (continued)

### Public Safety Civil Case:

*Donna Lindahl v. State of Missouri (Johnson Co.)* Ms. Lindahl, a custodial worker at a National Guard Armory at Whiteman Air Force Base, filed suit in June of 2005, seeking damages under Missouri's Human Rights Act for sexual harassment and retaliation. The case was first tried in March of 2010, resulting in a jury awarding no actual damages, but \$500,000 in punitive damages, a verdict the trial court set aside. The Missouri Court of Appeals, Western District, subsequently reversed that judgment, but then withdrew that opinion. A later per curiam decision again set aside the trial court's verdict based on "equitable" grounds and returned the case to the Circuit Court for a new trial. In August of 2012, this matter was heard in front of a Johnson County jury and, after deliberating for only ten minutes, the jury returned a verdict in favor of the state.

### Workers' Compensation Fraud and Noncompliance Unit

The Workers' Compensation Fraud and Noncompliance Unit prosecutes fraud and misconduct involving workers' compensation. This unit takes seriously its obligations to the state's business community to hold accountable those individuals who would steal from our workers' compensation system and undermine a sound business climate. Unit attorneys take action against employees attempting to fraudulently obtain workers' compensation benefits and against employers who violate the law by not obtaining mandatory workers' compensation insurance. Additionally, the unit attempts to recover restitution for injured workers, insurance companies and the state's Second Injury Fund.

In 2012, the unit received 346 referrals from the Department of Labor for review, investigation and prosecution.

In 2012, attorneys filed criminal charges in 28 cases, appearing in 46 counties throughout the state. For the year, more than \$519,317 was assessed against violators for fraud and insurance noncompliance with actual monies collected from violators totaling \$472,358. In addition, attorneys saw the collection of more than \$51,847 in restitution for the state's Second Injury Fund and other victims of workers' compensation fraud and noncompliance.



## Public Safety Division (continued)

### Medicaid Fraud Control Unit (MFCU)

The Medicaid Fraud Control Unit (MFCU) prosecutes fraud of the Medicaid program (Missouri MOHealthNet) by healthcare providers, and prosecutes abuse or neglect of Medicaid recipients by caregivers. The MFCU receives referrals or tips on potential Medicaid fraud and patient abuse/neglect from citizens and state agencies. The MFCU investigates these allegations across the state and collaborates with local, state and federal agencies to prosecute those who steal from Medicaid or harm the vulnerable.

In calendar year 2012, the MFCU obtained judgments and recoveries for the state totaling \$50,539,896.81. Additionally, the MFCU obtained 12 state criminal convictions and assisted the United States Attorney's Office for the Eastern District of Missouri in obtaining five federal criminal convictions.

During 2012, attorneys for the MFCU achieved advantageous settlements for the state of Missouri in 29 civil cases and 21 criminal cases. Three notable cases are highlighted and summarized as follows:

*Abdullah Ali, LCSW:* Abdullah Ali was a Licensed Clinical Social Worker (LCSW) providing counseling services in the St. Louis area. The MFCU identified various unlawful schemes by Ali, including: (1) Ali billed for family therapy sessions when services could not have been provided (as the parent was at work); (2) Ali's own records indicated that he provided therapy services to two clients at different locations at the same time; and (3) Ali billed Medicaid for multiple sessions of family therapy for the same family on the same day, in violation of Medicaid rules.

On June 11, 2012, Ali pleaded guilty to three counts of Medicaid Fraud. Ali was sentenced to 5 years in the Department of Corrections on each charge to run concurrently. Ali surrendered himself on June 21, 2012, and has paid a total of \$25,230 in overpayments and penalties.

*Comfort Dental (3 cases):* Comfort Dental – a franchise dental chain based in Colorado – billed Medicaid for services provided to individuals who were not eligible for Medicaid, resulting in a total loss to Medicaid of \$17,276.22. Additionally, the MFCU investigation revealed that each clinic double billed services to Medicaid, resulting in a total loss of \$4,271.64 and also charged Medicaid recipients for services the program had paid for.

In three separate settlements, the entities paid \$66,265.22 to resolve claims of both the Medicaid Fraud Control Unit and the Consumer Protection Division. The Consumer Protection Division sent checks totaling \$6,265.22 for those Missouri citizens who were improperly billed for Medicaid-covered services.

*Just What the Doctor Ordered, Inc.:* Teresa Linneman is the owner/operator of Just What the Doctor Ordered, Inc. ("JWTDO"), a durable medical equipment ("DME") company. The MFCU found that JWTDO billed Medicaid for more than 27,000 diapers that were never provided. The actual damage to Medicaid for the 702 identified false claims was \$36,890.66. The MFCU negotiated a Deferred Prosecution Agreement with Linneman/JWTDO, wherein Linneman will repay the state more than \$217,000.



## Public Safety Division (continued)

### Sexually Violent Predator Unit

The Sexually Violent Predator (SVP) Unit seeks civil commitment of sexual predators who suffer from a mental abnormality making them more likely than not to commit additional predatory acts of sexual violence.

In 2012, attorneys in the SVP unit ensured the civil commitment of 13 sexually violent persons. Attorneys for the unit appeared in 24 different counties around the state. Seven of the commitments were obtained by jury trial and included lifetime child molesters and sadistic rapists.

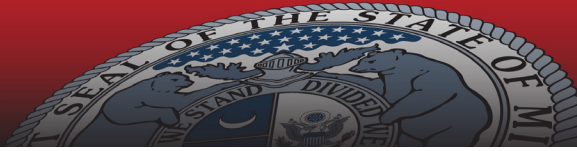
At the end of the year, attorneys in the unit had 36 active cases pending adjudication by trial and there were a total of 191 people committed under the SVP law. None of these predators will be released into Missouri communities until that person's mental abnormality no longer causes them to be likely to commit sexually violent offenses. A few notable cases resulting in the commitment of sexually violent predators included:

*In re: Brian Craig (Scotland Co.)* Brian Craig was convicted in Iowa in 1994 of sexually assaulting a 16 year-old girl. In 2004, he pleaded guilty in Scotland County to molesting a 10 year-old girl in Kirksville after four children, between the ages of 10-14 years, in his neighborhood reported sexual abuse. Craig was also cited for sexual misconduct on three other adult females in the area. While in prison, Craig forced himself on another inmate and was terminated from sex offender treatment on two separate occasions.

*In re: Jesse Parnell (Dade Co.)* Jesse Parnell abducted and sodomized a 14-year-old boy in 1989. In 1997, a month after being released on parole, Parnell sodomized a 15-year-old boy with special needs. While incarcerated, Parnell admitted to raping at least 21 other boys between the ages of 8-14 years. During his most recent incarceration, Parnell refused all efforts at sex offender treatment.

*In re: Gerald Head (Buchanan City)* In 1997, Gerald Head molested an 8-year-old boy in a men's bathroom at a swimming facility, as well as a 9-year-old boy in the victim's home. Head also reported molesting three more male victims, between the ages of 9-15 years, at a laundromat, mall bathroom, and city pool bathroom. Head had previously been convicted for sexually assaulting a random adult male in a public bathroom in 1995. Head was terminated twice from sex offender treatment while incarcerated.

*In re: Jerome Brown (St. Louis City)* Between the years of 1979 to 1985, Brown was identified by eight victims ranging from age 11 to 40 as having raped them in the same neighborhood. In 1985, Brown was convicted of sexually assaulting a 34-year-old man. Also in 1985, Brown was convicted at trial for entering a dry cleaner during business hours and raping a 19-year-old female victim. In 2005, Brown absconded from parole and was later arrested for the rape of a 36-year-old female.



## Public Safety Division (continued)

### **Habeas Unit**

Attorneys in the Habeas Unit defend the state in all habeas corpus actions filed by inmates in state and federal courts. Typically, these cases involve offenders filing lawsuits to challenge the basis and/or the duration of their custody. During 2012, attorneys in the unit defended the state's interest in 506 new cases in state and federal courts. Habeas attorneys appeared and defended these actions in both districts of the federal courts in Missouri, the United States Court of Appeals for the Eighth Circuit, Missouri Court of Appeals for the Western District, the Missouri Supreme Court and in trial courts around the state. The unit continues to play an important role within the criminal justice system in protecting the state's interest in inmate litigation.

A high profile case for the habeas unit in 2012 was the matter of Ryan Ferguson, an actual-innocence habeas petition filed in Cole County, challenging a 40-year murder sentence for the killing of Boone County sports reporter Kent Heitholt. CBS TV's "48 Hours" and NBC TV's "Dateline" covered various parts of this case. This matter was heard in Cole County in April of 2012, before Judge Daniel Green. After briefing, Judge Green entered judgment for the state on October 31, 2012.

### **Victim Services Unit**

The Victim Services Unit provides assistance to crime victims with compassion and respect to help them understand their options, minimize their trauma, and stabilize their lives. Advocates serve victims of crime and their families across the state of Missouri through home visits, court accompaniment and in helping them obtain victim compensation and other support as needed. Dealing with the aftermath of a violent crime can be overwhelming, and the unit employs two full-time victim advocates to help reduce stress and make sure that the rights of crime victims are honored and to ensure that they have a strong voice in the criminal justice system.

In 2012, the unit served 317 victims in criminal prosecutions, making 1,696 different individual contacts. Additionally, the unit served 180 different victims associated with sexually violent predator litigation, making a total of 703 different contacts.